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COMMONWEALTH OF MASSACHUSETTS

Appeals Court

SUFFOLK, SS.

No. 2016-P-0613

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OMARI PETERSON,  
*Plaintiff-Appellee,*

v.

COMMONWEALTH OF MASSACHUSETTS,  
*Defendant-Appellant*

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ON PRESENT-EXECUTION APPEAL FROM  
AN ORDER OF THE SUFFOLK SUPERIOR COURT

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**BRIEF OF THE APPELLANT  
COMMONWEALTH OF MASSACHUSETTS**

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### QUESTIONS PRESENTED

1. Whether the Superior Court erred in ruling that the reversal of Omari Peterson's underlying conviction on the grounds that a motion to suppress should have been allowed "tends to establish his innocence" for purposes of meeting the threshold eligibility requirements for an erroneous conviction claim pursuant to G.L. c. 258D.

2. Whether the Superior Court erred in considering arguments that did not form the basis for the judicial relief obtained by Peterson and then ruling that, absent a judicial determination that the knife found on Peterson was a "dangerous weapon," Peterson could proceed with his chapter 258D claim.

### STATEMENT OF THE CASE

This is an appeal of an order dated February 3, 2016 of the Suffolk Superior Court (Lauriat, J.) denying the Commonwealth's Rule 12(b)(6) motion to dismiss. Record Appendix ("RA") RA43-RA47.

Plaintiff, Omari Peterson ("Peterson"), filed a complaint under the erroneous conviction statute, G.L. c. 258D, dated November 26, 2014, naming the Commonwealth as defendant. RA7-RA14. In response, the Commonwealth moved to dismiss Peterson's complaint

on the ground that Peterson does not fall within the statutorily-limited class of eligible claimants, as the grounds upon which this Court overturned his conviction in 2012 do not tend to establish his innocence of the underlying crime. RA15-RA26.

On January 19, 2016, the Superior Court heard argument on the Commonwealth's motion to dismiss. RA4. On February 3, 2016, the Superior Court denied the Commonwealth's motion to dismiss. RA43-RA47.<sup>1</sup> On February 12, 2016 the Commonwealth filed a notice of appeal, citing the doctrine of present execution. RA48-RA49.<sup>2</sup>

#### **STATEMENT OF FACTS**

On December 5, 2008, Peterson was traveling in a motor vehicle that was stopped by the Boston Police at the intersection of Magnolia and Lawrence Streets in Dorchester for traffic infractions. RA9. Peterson produced his license and registration which proved valid.

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<sup>1</sup> The copy of this decision is also produced in the addendum to this brief. See Add. 4 - Add. 8.

<sup>2</sup> The Commonwealth is entitled to bring this appeal under the doctrine of present execution. Whether Peterson is eligible as a member of the class of individuals permitted to sue under G.L. c. 258D, and for whom sovereign immunity is waived, is immediately appealable. *Irwin v. Commonwealth*, 465 Mass. 834, 840-842 (2013).

*Id.* The police questioned the occupants of the vehicle and subsequently ordered them out of the vehicle.

RA10. The police found a knife clipped to Peterson's pocket. *Id.* Peterson was arrested and charged with one count of unlawful possession of a dangerous weapon pursuant to G.L. c. 269, § 10(b). *Id.* A jury convicted Peterson of the offense and he was sentenced to the House of Correction for two and one-half years. *Id.*

Peterson appealed his conviction. *Id.* On appeal, Peterson raised several arguments: (1) that the jury instruction regarding what constitutes a dangerous weapon was improper, (2) that there was insufficient evidence that the knife Peterson was carrying was a dangerous weapon, and (3) that the motion judge erred in denying Peterson's motion to suppress evidence obtained during a warrantless search of a motor vehicle. *Id.* On October 25, 2012, this Court issued a Rule 1:28 decision setting aside the verdict. *Commonwealth v. Peterson*, No. 2011-P-893, 82 Mass. App. Ct. 1118 (2012).<sup>3</sup> The Court concluded that, based on the totality of the circumstances, the officer's exit order was unreasonable and that Peterson's

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<sup>3</sup> A copy of this decision is produced in the Record Appendix at RA1-RA3 as well as in the Addendum to this brief. See Add. 1 - Add. 3.

motion to suppress should have been allowed. *Id.* As a result, the Court did not reach Peterson's alternative arguments regarding the jury instruction or the sufficiency of evidence regarding the knife as a "dangerous weapon". *Id.* at FN 1. The Commonwealth sought further appellate review, which was denied on December 19, 2014. RA12.

#### **SUMMARY OF ARGUMENT**

The decision of the Superior Court denying the Commonwealth's motion to dismiss Peterson's complaint should be reversed and an order should be entered allowing the motion and dismissing the complaint.

Peterson's complaint should be dismissed because he does not fall within the limited class of individuals who are eligible to bring a claim under G.L. c. 258D. See *infra* at 6-17. To be eligible, he must have obtained "judicial relief ... on grounds which tend to establish the innocence of the individual as set forth in clause (vi) of subsection (C)," which in turn requires that "he did not commit the crimes or crime charged in the indictment or complaint or any other felony arising out of or reasonably connected to the facts supporting the indictment or complaint, or any lesser included .



felony[.]” G.L. c. 258D, §§ 1(B)(ii), 1(C)(vi).

Peterson’s conviction was overturned due to the admission of evidence – a knife – at his criminal trial that should have been suppressed or excluded.

This Court has clearly ruled that such reversals do not meet the eligibility requirements to bring a claim under the statute. *Riley v. Commonwealth*, 82 Mass. App. Ct. 209, 215 (2012) (“[t]he Legislature clearly did not intend to provide compensation merely because evidence of a claimant’s guilt should have been suppressed or excluded”). See *infra* at 11-14. The determination that the knife should have been suppressed or excluded is not probative of the proposition that Peterson did not commit the crime of possession of a dangerous weapon. See *infra* at 15-17. This is especially true where Peterson never denied that he was in possession of the knife.

Finally, the decision denying the Commonwealth’s motion to dismiss is erroneous because the Superior Court improperly considered arguments about whether the knife was in fact a dangerous weapon that were never reached by this Court and that do not form the basis for the judicial relief obtained by Peterson. See *infra* at 17-20.

## ARGUMENT

### **I. PETERSON IS NOT ELIGIBLE TO SEEK RELIEF PURSUANT TO G.L. c. 258D BECAUSE HIS CONVICTION WAS OVERTURNED ON REVERSAL OF A SUPPRESSION RULING, NOT ON GROUNDS TENDING TO ESTABLISH INNOCENCE**

Peterson is seeking damages against the Commonwealth pursuant to G.L. c. 258D § 1, *et seq.* The Superior Court erred in denying the Commonwealth's motion to dismiss because Peterson is not within the limited class of individuals who may bring a claim under G.L. c. 258D for an erroneous conviction. See G.L. c. 258D, § 1, *et seq.* Specifically, Peterson's underlying conviction was not reversed on grounds which tend to establish his innocence as required by the statute. *Id.*

#### **A. Eligible Claimants under G.L. c. 258D Are Limited to Those Granted Judicial Relief on Grounds Tending to Establish Innocence**

Chapter 258D was enacted to provide compensation to certain individuals who can prove they were erroneously convicted of a felony. See G.L. c. 258D, § 1, *et seq.* However, relief under the statute is limited to individuals who, as an initial matter, satisfy certain threshold criteria. G.L. c. 258D § 1(B); *Irwin v. Commonwealth*, 465 Mass. 834, 839 (2013), *Drumgold v. Commonwealth*, 458 Mass. 367, 376-

77 (2010); *Guzman v. Commonwealth*, 458 Mass. 354, 360-61 (2010); *Riley v. Commonwealth*, 82 Mass. App. Ct. 209, 211-212 (2012). The language of the statute, well-established case law, and legislative history all make clear that such compensation is intended only for those individuals who were erroneously convicted of crimes for which such individuals are, in fact, innocent - rather than for persons who could establish that they should have been found "not guilty" at trial. *Guzman*, 458 Mass. at 360.

In this regard, G.L. c. 258D sets forth eligibility requirements for potential claimants and waives the Commonwealth's sovereign immunity only for claimants who meet those requirements. *Irwin*, 465 Mass. at 841-42. Section 1(B) of the statute sets forth the eligibility requirements that a claimant must satisfy to state a claim for relief. G.L. c. 258D, § 1(B).

Section 1(B) limits claimants, except those who have received a full pardon, to those who can establish that they were "granted judicial relief by a state court of competent jurisdiction, *on grounds which tend to establish the innocence of the individual...*" G.L. c. 258D, § 1(B)(ii) (emphasis

added). "Innocence" is in turn defined as factual innocence, i.e., that the plaintiff "did not commit the crimes or crime charged in the indictment or complaint or any other felony arising out of or reasonably connected to the facts supporting the indictment or complaint, or any lesser included felony." G.L. c. 258D, § 1(C)(vi).

In *Guzman*, the Supreme Judicial Court made clear that the eligibility requirements of G.L. c. 258D are intended to perform a screening function and limit the class of persons entitled to pursue relief. *Guzman*, 458 Mass. at 360. In *Riley*, this Court provided further clarification, finding that "in order to pass the initial bar of G.L. c. 258D, § 1(B), 'the relief granted must be on grounds tending to do more than merely assist the defendant's chances of acquittal.'" *Riley*, 82 Mass. App. Ct. at 216, citing *Guzman*, 458 Mass. at 362. The threshold requirement - that the grounds for judicial relief reversing a conviction must "tend to establish the *innocence* of the individual" - was specifically designed to have "the effect of limiting the class of claimants to those who received judicial relief on grounds that *directly implicate innocence*." *Guzman*, 458 Mass. at 358-59

(emphasis added); see *Guzman v. Commonwealth*, 74 Mass. App. Ct. 466, 474 & n.7 (2009) (quoting a principal sponsor of Chapter 258D, State Representative Patricia Jehlen, who, in writing to the Governor, stated that the Legislature had "made dozens of changes to ensure that only people who are *actually innocent* will receive compensation" (emphasis added)).

The Supreme Judicial Court elaborated on the meaning of the phrase "grounds which tend to establish innocence" in *Guzman*, quoting with approval this Court's explanation that "the phrase is properly understood to mean judicial relief on grounds resting upon facts and circumstances probative of the proposition that the claimant did not commit the crime." *Guzman*, 458 Mass. at 362 (quoting *Guzman v. Commonwealth*, 74 Mass. App. Ct. 466, 477 (2009)).

The *Guzman* court closely examined an amendment to the original statutory language, proposed by the Governor and ultimately adopted, which changed the wording of the eligibility provision, from "on grounds consistent with . . . innocence" to the narrower "on grounds which tend to establish the innocence of the individual." 458 Mass. at 358. The court concluded that the original language would have allowed

claimants to meet the threshold requirement when their convictions were reversed due to procedural or evidentiary errors at their trials. *Id.* at 358-59.

"The adoption of the gubernatorial amendment had the effect of *limiting* the class of claimants to those who received judicial relief on grounds that *directly implicate innocence*." *Id.* (emphasis added).

Accordingly, the threshold requirement of G.L. c. 258D requires that the conviction be overturned on grounds tending to establish that the individual is innocent, not on whether but for an erroneous legal ruling, the individual should have been found "not guilty" at trial.

**B. The Reversal of the Motion to Suppress Does Not Tend to Establish Peterson's Innocence**

The basis for the reversal of Peterson's underlying conviction does not place him within the limited class of individuals who may bring a claim under G.L. c. 258D. The judicial relief obtained by Peterson is a ruling by this Court that his motion to suppress should have been allowed. See Addendum 1. Specifically, the Court determined that the order for Peterson and the other passengers to exit the motor vehicle after being stopped for a traffic violation,

which preceded the discovery of the knife in Peterson's possession, was improper. See Addendum 2. As a result, the Court concluded that it was error to deny the motion to suppress, and the Court ordered that the judgment be reversed, the verdict be set aside, and an order be entered allowing the motion to suppress. See Addendum 3.

The reversal of the denial of a motion to suppress does not tend to establish innocence. As a result, Peterson is not within the limited class of individuals who are eligible to bring a claim against the Commonwealth under G.L. c. 258D.

**1. The Reversal of a Conviction Based on the Admission of Evidence that Should Have Been Suppressed or Excluded Does Not Satisfy the Eligibility Requirements of the Erroneous Conviction Statute**

This Court has ruled that "[t]he Legislature clearly did not intend to provide compensation merely because evidence of a claimant's guilt should have been suppressed or excluded." See *Riley*, 82 Mass. App. Ct. at 215 (emphasis added).

The circumstances of this case are closely analogous to those in *Riley*. There, the plaintiff sued under G.L. c. 258D after his underlying

conviction was reversed due to a *Bruton* error.<sup>4</sup> *Riley*, 82 Mass. App. Ct. at 209 (citing *Bruton v. United States*, 391 U.S. 123 (1968)). Upon review, this Court concluded that such judicial relief was not on grounds which tend to establish innocence and ordered that the plaintiff's complaint be dismissed. *Riley*, 82 Mass. App. Ct. at 215. The Court determined that the case was readily distinguishable from other cases which consider the eligibility requirements of G.L. c. 258D, because the jury in *Riley* was not "forestalled from making a fully informed decision". *Id.* (citing *Drumgold*, 458 Mass. at 378). Rather, the jury in *Riley*'s case had *too much* information because they heard hearsay statements which amounted to confessions that should have been suppressed. *Id.*

The same is true here. As in *Riley*, the jury in Peterson's underlying criminal case had too much information, in that they were permitted to hear evidence, obtained following the exit order, which should have been suppressed or excluded.

Specifically, the jury was permitted to hear testimony

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<sup>4</sup> Specifically, hearsay statements of *Riley*'s co-defendant were improperly admitted as evidence of guilt at *Riley*'s trial. *Riley*, 82 Mass. App. Ct. at 210.



and see evidence regarding the knife found in Peterson's possession. This is not a situation where the jury was prevented from hearing admissible evidence that would support acquittal. The fact that the jury erroneously was allowed to hear evidence of Peterson's possession of the knife does not tend to establish Peterson's innocence. In fact the opposite is true, in that the evidence clearly supports his factual guilt, even if allowing the jury to hear it was legal error.

This Court in *Riley* made clear that circumstances such as this fail to meet the eligibility requirements set forth in G.L. c. 258D. *Riley*, 82 Mass. App. Ct. at 215 ("[t]he Legislature clearly did not intend to provide compensation merely because evidence of a claimant's guilt should have been suppressed or excluded"). In reaching this conclusion, the Court recognized the fact that section 1(F) of the statute provides that at a trial on the merits of a G.L. c. 258D compensation claim, "[n]o evidence proffered by any party shall be excluded on grounds that it was seized or obtained in violation of the Fourth, Fifth or Sixth [A]mendments to the Constitution of the United States, or in violation of Articles 12 or 14 of

Part the First of the Constitution of Massachusetts."

*Id.* (citing G.L. c. 258D, § 1(F)).

This provision is significant because, although the knife evidence obtained from Peterson was deemed to have been improperly admitted during his criminal trial, the same would not be true in this civil case. If this case were to proceed to trial, the evidence of Peterson possessing the knife could not be excluded on the ground that it was improperly obtained. G.L. c. 258D, § 1(F). Accordingly, any jury in this case would be allowed to hear the same evidence related to Peterson's possession of the knife that was deemed to have been improperly admitted at Peterson's criminal trial.

Since Peterson's underlying conviction was reversed based solely on the erroneous suppression ruling, Peterson has not obtained judicial relief on grounds which tend to establish his innocence and he is not eligible to bring a claim under G.L. c. 258D. Accordingly, the Commonwealth's motion to dismiss should have been allowed and Peterson's complaint should be dismissed.

**2. The Reversal of Peterson's Conviction Is Not Based on Facts and Circumstances Probative of the Proposition that Peterson did not Commit the Crime**

Peterson's claim is further defective because the reversal of his conviction was not based on "facts and circumstances probative of the proposition that the claimant did not commit the crime," as is required for eligibility. *Irwin*, 465 Mass. at 844. When reviewing a plaintiff's eligibility to bring a claim under G.L. c. 258D, courts look not only at the legal rationale for judicial relief but also the "facts and circumstances" on which the relief rests. *Riley*, 82 Mass. App. Ct. at 214 (citing *Guzman*, 458 Mass. at 362). A ruling that simply makes it more difficult for the Commonwealth to prove that an individual did in fact commit the crime alleged is *not* the same as a determination that is probative of innocence. See *Riley*, 82 Mass. App. Ct. at 216.

The facts and circumstances on which the reversal of Peterson's conviction rests are not probative of the proposition that Peterson did not commit the crime. Peterson's conviction was not overturned as the result of some fact or circumstance that calls his factual guilt into question or that supports the

inference that he did not possess the weapon. The conviction was overturned due to procedural errors in the admission of evidence. Therefore, the reversal of Peterson's conviction was not based on any question as to whether or not Peterson did in fact unlawfully possess the knife. Indeed, Peterson never denied that he was in possession of the knife. See RA7-RA14.

The grounds for reversal of the conviction in this case are readily distinguishable from other cases under G.L. c. 258D in which courts have deemed the judicial relief to be probative of innocence. See, e.g., *Drumgold*, 458 Mass. at 367 (conviction overturned due to newly discovered evidence that identification witness was suffering from a medical condition that called her testimony into question); *Guzman*, 458 Mass. at 354 (conviction overturned due to defense counsel failing to call two witnesses who would have testified that culprit was someone else).

Since the judicial relief obtained by Peterson is not based on facts and circumstances which are probative of the proposition that Peterson did not commit the crime of possession of a dangerous weapon, Peterson cannot meet the eligibility requirements of G.L. c. 258D. Accordingly, the Commonwealth's motion

to dismiss should have been allowed and Peterson's complaint should be dismissed.

**II. IT WAS ERROR FOR THE SUPERIOR COURT TO CONSIDER WHETHER OR NOT THE KNIFE POSSESSED BY PETERSON CONSTITUTES A DANGEROUS WEAPON AND THAT THERE HAS NOT BEEN AN APPELLATE JUDICIAL DETERMINATION ON THAT ISSUE**

In denying the Commonwealth's motion to dismiss, the Superior Court held that the reversal of Peterson's conviction meant that there has not been a judicial determination that the knife found on Peterson was a "dangerous weapon," and that without such a determination "it would be speculative to conclude that the judicial relief granted by the Appeals Court does not rest on 'grounds tending to establish innocence.'" See Add. at 7.

This ruling is flawed because it considers factors which go beyond the specific judicial relief obtained by Peterson. In reviewing the eligibility of a plaintiff to bring a claim under G.L. c. 258D, courts must review only the judicial relief actually obtained. G.L. c. 258D, § 1(B). There is no basis in the language of the statute, or the cases interpreting it, to consider additional arguments that never formed the basis for the judicial relief obtained.

No "speculati[on]" is necessary, because the

relief Peterson obtained from this Court in the appeal of his criminal conviction is expressly based solely on the suppression issue, and the Court expressly declined to reach Peterson's additional arguments that the knife was not a "dangerous weapon" and that the jury instructions on that issue were defective.<sup>5</sup> Peterson has also attempted to assert these arguments in connection with this action. See RA7-RA14, RA27-RA38.

However, consideration of these arguments is improper because Peterson did not obtain judicial relief on these grounds. See Add. 1 - Add. 3. Notably, nothing in the Court's suppression ruling tends to suggest, or support Peterson's arguments, that the knife was not "dangerous" or that the instructions on that issue were defective. *Id.* Contrary to the suggestion that there has never been a determination of whether the knife was "dangerous" or whether the instructions were proper, any objection to

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<sup>5</sup> The Court said that Peterson claimed error in the "jury instructions" and "also argues there was insufficient evidence to identify the knife as a "dangerous weapon" within the meaning of the statute. ... Concluding, as we do, that the exit order was improper, we need not reach the defendant's additional claims, as our ruling renders them moot." See Add. at 1, n.1.

the instructions, if one was made, were rejected in the course of Peterson's criminal trial and the jury, so instructed, found beyond a reasonable doubt that the knife was a "dangerous weapon".

To be sure, Peterson was not able to obtain appellate review of his claims of error on those issues, because this Court found it unnecessary to reach them. See Add. at 1, n.1. But that does not suggest, let alone establish, that the trial court and jury got it wrong. So Peterson's entire claim under G.L. c. 258D, as the Superior Court allowed it to go forward, is premised on grounds different from that on which Peterson obtained "judicial relief" from this Court in his appeal of the criminal conviction. To allow a claim pursuant to G.L. c. 258D to go forward on the basis of claims of error left unresolved from the criminal case would substantially undercut if not destroy the function of the threshold "tending to establish innocence" requirement.

Since this Court declined to reach the questions of whether the jury was properly instructed on what constitutes a dangerous weapon or whether there was sufficient evidence to prove that Peterson's knife was a dangerous weapon, Peterson did not obtain judicial

relief on those grounds. Therefore, the Superior Court's consideration of those issues was erroneous.

**CONCLUSION**

For the foregoing reasons, this Court should vacate the Superior Court order denying the Commonwealth's Motion to Dismiss and remand for entry of an order granting that motion and dismissing the case.

Respectfully submitted,

Defendant-Appellant,  
COMMONWEALTH OF MASSACHUSETTS

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August 15, 2016



**CERTIFICATION PURSUANT TO MASS. R. APP. P. 16(k)**

I certify that the foregoing brief complies with all rules of court pertaining to the filing of briefs, including, but not limited to, Mass. R. App. P. 16 and 20.

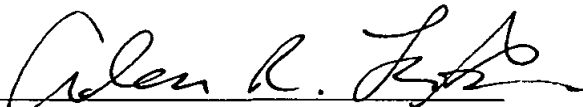


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**CERTIFICATE OF SERVICE**

I, Adam R. LaGrassa, Assistant Attorney General, hereby certify that I have this day, August 15, 2016, served two copies of the foregoing Brief of the Appellee upon the attorney of record for the Plaintiff-Appellant by First Class Mail to:

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**ADDENDUM**

Massachusetts Appeals Court Decision Overturning Peterson's Conviction.....	ADDENDUM 1
Superior Court Decision on the Commonwealth's Motion to Dismiss.....	ADDENDUM 4

82 Mass.App.Ct. 1118  
Unpublished Disposition  
NOTICE: THIS IS AN UNPUBLISHED OPINION.  
Appeals Court of Massachusetts.

COMMONWEALTH  
v.

Omari A. PETERSON.

No. 11-P-893. | October 25, 2012.

By the Court (KAFKER, BROWN & VUONO, JJ.).

*MEMORANDUM AND ORDER PURSUANT TO RULE 1:28*

\*1 The defendant appeals his conviction of carrying a dangerous weapon (G.L. c. 269, § 10[b ]), arguing that the trial judge erred (1) in denying his pretrial motion to suppress, and (2) in his jury instructions. He also argues there was insufficient evidence to identify the knife as a “dangerous weapon” within the meaning of the statute. We reverse.<sup>1</sup>

<sup>1</sup> Concluding, as we do, that the exit order was improper, we need not reach the defendant's additional claims, as our ruling renders them moot.

I. *Background.* On December 5, 2008, Omari Peterson was stopped by Boston police Officers Brian Dunford and Brendan Lyons for several traffic violations at the intersection of Magnolia and Lawrence Streets in Dorchester,<sup>2</sup> an area known for its dangerousness, firearms, and gang activity. At the beginning of their shift, the officers were told to be aware of the increase of firearms in the area. Once stopped, the defendant produced his license and registration upon a request from Officer Lyons. After the license and registration proved valid, the officers questioned the occupants of the vehicle. Later, Officer Dunford would testify to knowing the reputations of all the passengers and that the front seat passenger, Ms. Cowans, looked out of place. Subsequently, the occupants were ordered out of the vehicle, whereupon the defendant was found with a knife clipped to his jeans.

<sup>2</sup> The offenses included failure to signal (G.L. c. 90, § 14B); failure to illuminate rear license plate (G.L. c. 90, § 86); and window obstructed/nontransparent (G.L. c. 90, § 9D).

II. *Discussion.* The defendant argues that his motion to suppress should have been allowed, as the police did not have adequate grounds to issue an exit order. We agree.<sup>3</sup>

<sup>3</sup> When reviewing a motion to suppress, “[w]e accept the motion judge's findings of fact absent clear error, acknowledging that the weight and credibility of testimony is for the judge hearing the motion, but we review independently the motion judge's ultimate findings and conclusions of law.” *Commonwealth v. Pena*, 69 Mass.App.Ct. 713, 717 (2007). “[O]ur duty is to make an independent determination of the correctness of the judge's application of constitutional principles to the facts as found.” *Commonwealth v. Mercado*, 422 Mass. 367, 369 (1996).

During a routine traffic stop, in order for the police to give an exit order, there must be evidence to show that a “reasonably prudent [person] in the [officer's] position would be warranted in the belief that the safety of the police or that of other persons was in danger.” *Commonwealth v. Vasquez*, 426 Mass. 99, 102–103 (1997), quoting from *Commonwealth v. Santana*, 420 Mass. 205, 212–213 (1995). See *Commonwealth v. Gonsalves*, 429 Mass. 658, 662 (1999) (“[A] police officer must, at least, have a reasonable suspicion of danger before compelling a driver to leave his motor vehicle”). To demonstrate reasonableness,

ADDENDUM 1

"specific and articulable facts" are required. *Commonwealth v. Williams*, 46 Mass.App.Ct. 181, 184 (1999), quoting from *Commonwealth v. King*, 389 Mass. 233, 243 (1983).

Considering the totality of the circumstances, the officers' exit order was unreasonable.<sup>4</sup> While the police had valid justifications for the traffic stop, the exit order was unlawful. When Officer Lyons activated his siren and blue lights, the defendant immediately stopped his vehicle. Before approaching the vehicle, the officers acknowledged that they had already run the vehicle's plates. Once the officers approached the vehicle, the defendant produced a valid license and registration. The inquiry should have stopped there. See *Commonwealth v. Ferrara*, 376 Mass. 502, 504-505 (1978); *Commonwealth v. Alvarez*, 44 Mass.App.Ct. 531, 534 (1998) ("If, during a routine traffic violation stop, the driver of the car produces a valid license and registration, the officer, ordinarily, may issue a citation for the traffic offense and must then allow the car to continue on its way").

<sup>4</sup> However, we are mindful that "it does not take much for a police officer to establish a reasonable basis to justify an exit order or search based on safety concerns...." *Commonwealth v. Gonsalves*, 429 Mass. at 664.

\*2 However, according to Officer Lyons's testimony, once the documents were produced and validated, the officers began to interrogate the passengers. In order to expand a threshold inquiry of a motorist and prolong his detention, an officer must reasonably believe that there is further criminal conduct afoot, and that belief "must be 'based on specific and articulable facts and the specific reasonable inferences which follow from such facts in light of the officer's experience.'" *Commonwealth v. King*, *supra*, quoting from *Commonwealth v. Silva*, 366 Mass. 402, 406 (1974). The question, therefore, is whether the officers had reasonable suspicion to detain further the occupants after the defendant complied with the normal requirements for the traffic violation.

Here, the officers relied on the criminal history of the occupants of the vehicle to justify the interrogation and exit order.<sup>5</sup> The motion judge concluded that the mere presence of the four individuals together, coupled with their criminal history, warranted further questioning by the officers. However, this misses the mark. "A mere hunch ... on the part of the officer that there is something wrong is insufficient to satisfy the requirement of specific and articulable facts." *Commonwealth v. Williams*, 46 Mass.App.Ct. at 184. See *Commonwealth v. Torres*, 424 Mass. 153, 158 (1997) (police may not interrogate passengers unless there is a "reasonable suspicion, grounded in specific, articulable facts" of criminal activity or suspicious behavior).

<sup>5</sup> Specifically, Officer Dunford testified that his suspicion arose because the occupants did not look like they belong together and one of the passengers, Ms. Cowans, was unable to identify any of the other occupants, which caused Officer Dunford to surmise that she was a prostitute. However, inquiring about the defendant's identification was unwarranted as he had already produced his identification. Compare *Commonwealth v. Feyenord*, 445 Mass. 72, 76 (2005) (interrogation of the passenger regarding the driver's identification was warranted because the driver was unable to produce his driver's license).

The Commonwealth argues that the officers' exit order was reasonable because the car was stopped in a high crime area, the occupants were known criminals, and the vehicle windows were tinted. Yet, the defendant rolled down the windows when requested to do so. The officers did not testify to witnessing furtive movements or concerns about their safety. The officers did not see any visible presence of contraband or weapons. Contrast *Commonwealth v. Moses*, 408 Mass. 136, 138 (1990) (passenger ducked under the dashboard); *Commonwealth v. Rivera*, 33 Mass.App.Ct. 311, 312 (1992) (passenger bent forward as if to place or retrieve an object); *Commonwealth v. Robie*, 51 Mass.App.Ct. 494, 499 (2001) (exit order appropriate based on officer's safety concerns, his observations of the defendant's demeanor, the unusual placement of driver's license, and his suspicion of the defendant committing several burglaries). Here, the officers testified that they believed that a drug transaction or prostitution may have been occurring, but had no plausible explanation of how they reached that conclusion other than relying on the reputations of the occupants. See *Commonwealth v. Feyenord*, 445 Mass. 72, 94 (2005) (Marshall, J., dissenting) ("In other words, even if a police officer has a legitimate basis for extending a traffic stop ..., the officer cannot order a person out of a vehicle unless the officer has a reasonable belief that removal from the vehicle is required for reasons of safety").

\*3 In short, the exit order was a pretext, as it is devoid of any specific articulable facts on which to base a reasonable apprehension of danger or that a crime had been committed. Legitimizing an exit order that stems from driving in a high crime area and the reputations of the passengers, without more, would set a dangerous precedent.

It was error to deny the defendant's motion to suppress. The judgment is reversed and the verdict is set aside. An order shall enter allowing the motion to suppress.

*So ordered.*

Parallel Citations

977 N.E.2d 105 (Table), 2012 WL 5258855 (Mass.App.Ct.)

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**NOTIFY**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2014-3897-C

OMARI PETERSON

v.

COMMONWEALTH OF MASSACHUSETTS

MEMORANDUM OF DECISION AND ORDER ON  
COMMONWEALTH'S MOTION TO DISMISS

On December 5, 2008, Omari Peterson ("Peterson") was stopped by Boston police officers for moving traffic violations. The officers asked for identification, which Peterson produced, and which proved valid. The officers then asked Peterson to exit the vehicle, and when he did so, the officers discovered a knife clipped to his pants pocket. Peterson was arrested, and subsequently charged and convicted in the Dorchester Municipal Court of carrying a dangerous weapon pursuant to G.L. c. 269 § 10(b). Peterson was sentenced to two and a half years in the Suffolk County House of Correction.

Peterson appealed to the Massachusetts Appeals Court, which ruled on October 25, 2012, that the exit order given by the officers, which led to the seizure of the knife, was unreasonable because the officers had no "specific or articulable facts on which to base a reasonable apprehension of danger or that a crime had been committed." *Commonwealth v. Peterson*, 82 Mass. App. Ct. 1118, at \*3 (2012). The

Appeals Court reversed the judgment, set aside the verdict and directed that an order enter allowing Peterson's motion to suppress the knife. Further review by the Supreme Judicial Court was denied.

Peterson has now brought a so-called "wrongful conviction" action for monetary damages pursuant to G.L. c. 258D, § 1. He alleges in Count 2 of his Complaint that he meets all of the statutory requirements entitling him to relief under c. 258D.

### DISCUSSION

The Commonwealth has moved to dismiss this action, pursuant to Mass.R.Civ.P. 12(b)(6), on the ground that Peterson is not within the class of persons eligible for relief under c. 258D. In considering a Rule 12(b)(6) motion to dismiss, this court takes "as true the allegations in the complaint and favorable inferences drawn therefrom." *Lipsitt v. Plaud*, 466 Mass. 240, 241 (2013). To survive a motion to dismiss, "a complaint . . . does not need detailed factual allegations," but "requires more than labels and conclusions," and must contain "allegations plausibly suggesting (not merely consistent with) an entitlement to relief." *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007). Dismissal under Mass.R.Civ.P. 12(b)(6) is proper where a reading of the complaint establishes beyond doubt that the facts alleged do not support a cause of action that the law recognizes, such that the plaintiff's claim is

legally insufficient. *Nguyen v. William Joiner Ctr. for the Study of War & Soc. Consequences*, 450 Mass. 291, 294 (2007).

In order to be eligible for relief under G.L. c. 258D, a plaintiff must establish that he is "within the class of persons eligible to obtain relief." G.L. c. 258D § 1(B). In order to establish eligibility, the judicial relief that overturned the conviction must have been granted on "grounds which tend to establish the innocence" of the claimant. G.L. c. 258D § 1(B)(ii), *Guzman v. Commonwealth*, 458 Mass. 354, 358 (2010), *Drumgold v. Commonwealth*, 458 Mass. 367, 376 (2010). The Supreme Judicial Court has interpreted this to mean that the conviction must be overturned "on grounds resting upon facts and circumstances probative of the proposition that the claimant did not commit the crime." *Irwin v. Commonwealth*, 465 Mass. 834, 844 (2013) (quoting *Guzman*, *supra* at 359). The eligibility requirement is "separate and distinct from the merits of the claim of relief that a claimant must establish at trial, namely that he or she did not commit the charged offense." *Renaud v. Commonwealth*, 471 Mass. 315, 481 (2015) (quoting *Irwin*, *supra* at 839, 842). However, such grounds must "tend [ ] to do more than merely assist the defendant's chances of acquittal." *Irwin*, *supra* at 844 (quoting *Guzman*, *supra* at 360).

Accepting the allegations of the complaint as true, the court concludes that the facts alleged do support a plausible claim against the Commonwealth. Peterson's conviction was overturned because the trial court should have allowed a motion to



suppress the knife seized from Peterson as a result of the unreasonable exit order, and the basis for his conviction under G.L. c. 269 § 10(b). The Commonwealth has apparently not pursued Peterson's prosecution since the Appeals Court's ruling, though it also appears that the case has not been dismissed or *nol prossed*. Since the judgment has been reversed, there is no longer a judicial determination that the knife found on the plaintiff is dangerous within the meaning of G.L. c. 269 § 10(b). The Appeals Court declined to address Peterson's claim that the knife was legal, and limited its decision to the improper exit order. *Peterson, supra* at \*1 n.1. Absent a decision on Peterson's claim on appeal that the knife was legal, it would be speculative to conclude that the judicial relief granted by the Appeals Court does not rest on "grounds tending to establish innocence." G.L. c. 258D § 1(B)(ii); *Irwin, supra* (quoting *Guzman, supra*). Moreover, the Commonwealth has not taken any action in the trial court to determine the legality of the knife after Peterson's original conviction was reversed. Accepting the allegations in Peterson's Complaint as true, he has alleged that the type of knife that he possessed is legal and not dangerous, under *Commonwealth v. Higgins*, 85 Mass. App. Ct. 534 (2014).

At this stage of the present litigation, Peterson does not need to prove "the merits of the claim of relief that a claimant must establish at trial." *Renaud, supra* (quoting *Irwin, supra* at 839, 842). In order to be eligible for relief, he need only present facts and circumstances "probative of the proposition that the claimant did

not commit the crime." *Irwin, supra* at 844 (quoting *Guzman, supra* at 359).

Peterson presents at least a plausible claim that he did not violate G.L. c. 269 §10(b). Accordingly, the Commonwealth's motion to dismiss must be denied.

ORDER

For the foregoing reasons, defendant Commonwealth's Motion to Dismiss is  
DENIED.

A handwritten signature in black ink, appearing to read "Peter M. Lauriat", written over a horizontal line.

Peter M. Lauriat  
Justice of the Superior Court

Dated: February 3, 2016